IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.:	10/810,299
Applicants:	Christian BLEYS, et al.
Filed:	March 26, 2004
Title:	PORTABLE ASSEMBLY FOR EMERGENCY VENTILATION
TC/A.U.:	3743
Examiner:	Nihir B. Patel
Docket No.:	Serie 6155
Customer No.:	000040582

PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181(a)

Attention: Office of Petitions
MAIL STOP PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notice of Abandonment mailed February 4, 2008, Applicants respectfully petition for the withdrawal of the holding of abandonment under 37 C.F.R. § 1.181(a) on the basis that the Notice of Abandonment is improper since it is based on the failure to respond to an improper Advisory Action based on a non-existing Final Office Action. More specifically, Applicants respectfully maintain that:

1. The Examiner was incorrect in responding to Applicants Reply with an Advisory Action since the Office Action dated mailed May 17, 2005 was not a final Office Action;

2. Prosecution on the merits should not have been closed since there was no Final Office Action; and
3. The Examiner should have entered the amendments submitted in the Reply mailed by Applicants on August 17, 2005 and further considered the amendments/remarks in view of the arguments set forth in the non-final Office Action.

Applicants received a Notice of Abandonment mailed February 4, 2008 which provided that the current application had gone abandoned due to Applicants' "failure to timely file a proper reply to the Office letter mailed on 05.17.2005" (see Appendix 1 attached hereto). Applicants note that an Office Action was mailed to Applicants on May 17, 2005 (see Appendix 2 attached hereto). Applicants note that in Public PAIR this Office Action is noted as being final (see Appendix 5 attached hereto). However, there is no indication anywhere in the Office Action that the Office Action is final. In fact, on the PTOL-326 form, under the status, it is noted that "[r]esponsive to communication(s) filed on March 7th, 2005, [t]his action is non-final." On page 2 of this same Office Action, it is noted that the "Applicant's arguments with respect to claims 11-29 have been considered but are moot in view of the new ground(s) of rejection." Finally, on the last page (page 6) of the Office Action, there is no statement by the Examiner that the Office Action is final.

On August 17, 2005, Applicants filed a reply to the May 17, 2005 Office Action (see Appendix 3 attached hereto) addressing the items set forth in the non-final Office Action. The reply was entered into Public PAIR by the USPTO as "Amendment After Final" even though the reply did not indicate that it was an amendment after final.

On January 25, 2006, over two months after the six month statutory period for the May 17, 2005 Office Action, the Examiner mailed an Advisory Action Before the Filing of an Appeal Brief indicating that "the reply filed 08.22.2005 fails to place this application in condition for allowance" and further indicating that the amendments submitted in the

previous response would not be entered. (see Appendix 4 attached hereto). The Examiner went on to state in the Advisory Action that the "amended claims...contain subject matter...that raises new issues that would require further consideration and/or search."

On February 14, 2006, after receipt of the Advisory Action, the Manager of New Inventions and Patent Prosecution for Air Liquide who is solely responsible for the entry of U.S. docket items contacted the Examiner to inquire about the appropriateness of the Advisory Action. At that time, the Examiner stated that he would withdraw the Advisory Action and send a corrected action. No corrected action was ever received by Applicants even though several follow up messages were left on the Examiner's phone. In April of 2007 and December of 2007 the Manager received calls from different divisions within the USPTO regarding the status of the application. In each instance, the Manager explained the situation to the person calling. The person who called in December of 2007 indicated that they would check with the Examiner. On January 31, 2008, our Manger again spoke with the Examiner who indicated that he would talk about this issue with his supervisor. Shortly thereafter, the above noted Notice of Abandonment was mailed (February 4, 2008).

After receipt of the Notice of Abandonment, the undersigned placed a call to the Examiner and left a message inquiring about the appropriateness of the Notice of Abandonment. The undersigned also left a message for the supervisor of the Examiner. On March 20, 2008, the Examiner returned the call and left a message on the undersigned's phone indicating that the Notice of Abandonment was sent because Applicants failed to respond that the Final Rejection or Advisory Action was not proper. Applicants respectfully maintain that the failure to respond was in reliance upon the original statement made by the Examiner that he would withdraw the Advisory Action and send a corrected action. Furthermore, Applicants respectfully maintain that the situation was caused by the Examiner sending out an improper Advisory Action which has since resulted in the closing of prosecution.

Accordingly, in view of the above, Applicants respectfully request that the holding of abandonment be withdrawn, that prosecution be reopened and that the previous reply to the Office Action of May 17, 2005 submitted by Applicants be reconsidered by the Examiner in view of the reply being to a non-final Office Action.

In the event that this petition is not accepted, Applicants will go forward with a Petition For Revival of an Application For Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b). However, in view of the circumstances surrounding the closing of prosecution of the present application, Applicants felt it necessary to file the present petition in an effort to bring to light that it was not the intent of the Applicants to have the present application go abandoned.

Applicants do not believe that any additional fee is due at this time. However, in the event that any additional fees are due, the Commissioner is authorized to debit deposit account number 01-1375 for the amount due.

Respectfully submitted,

Donna B. Holguin
Registration No.: 38,082

Dated: **April 3, 2008**

Air Liquide
2700 Post Oak Blvd., Suite 1800
Houston, Texas 77056
713-624-8997 – Phone
713-624-8950 – Fax

Appendix 1

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,299	03/26/2004	Christian Bleys	Serie 6155	9269

7590 02/04/2008

Linda K. Russell
Air Liquide
Suite 1800
2700 Post Oak Blvd.
Houston, TX 77056

EXAMINER	
PATEL, NIHIR B	

ART UNIT	PAPER NUMBER
3772	

MAIL DATE	DELIVERY MODE
02/04/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

CT

Notice of Abandonment	Application No.	Applicant(s)	
	10/810,299	BLEYS ET AL.	
	Examiner	Art Unit	
	NIHIR PATEL	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 05.17.2005.
   (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
   (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
   (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
   (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
   (d) ☒ No reply has been received.

2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
   (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
   (b) ☐ The submitted fee of $_____ is insufficient. A balance of $_____ is due.
   The issue fee required by 37 CFR 1.18 is $_____. The publication fee, if required by 37 CFR 1.18(d), is $_____.
   (c) ☐ The issue fee and publication fee, if applicable, has not been received.

3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
   (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
   (b) ☐ No corrected drawings have been received.

4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. ☐ The reason(s) below:

PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700
1/31/08

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Appendix 2

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,299	03/26/2004	Christian Bleys	Serie 6155	9269

7590 05/17/2005

Linda K. Russell
Air Liquide
Suite 1800
2700 Post Oak Blvd.
Houston, TX 77056

EXAMINER	
PATEL, NIHIR B	

ART UNIT	PAPER NUMBER
3743	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/810,299	BLEYS ET AL.	
	Examiner	Art Unit	
	Nihir Patel	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *March 7th, 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) _____ is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11,12,14,17-20 and 22-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to **claims 11-29** have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims **11, 12, 14, 17, 18, 19, 20, 22, 27, 29, 30, 32, 33, 34, 35, 36, 37 and 38** are rejected under 35 U.S.C. 103(a) as being unpatentable over Russel, Sr. et al. (US 5,099,837) in view of Jonsson et al. (US 3,741,208).

Referring to claims 11, 12, 17, 18, 20, 22, 29, 30, 32, 34, 35, 37 and 38, Russel discloses the applicant's invention as claimed with the exception of providing a respiratory assistance ventilator that comprises an internal gas circuit forming a fluidic connection from an inlet orifice to an outlet orifice, and a proportional valve being arranged on the internal circuit, the valve being controlled by control means cooperating with the man/machine interface, wherein the respiratory assistance ventilator further comprises a flow-rate sensor and a pressure sensor for measuring the flow-rate and the pressure of the gas in the internal circuit, the sensors cooperating with the control means in such a way as to permit automatic control and regulation of the proportional valve in terms of flow-rate or pressure. Jonsson discloses a lung ventilator that does provide a respiratory assistance ventilator that comprises an internal gas circuit forming

a fluidic connection from an inlet orifice to an outlet orifice, and a proportional valve being arranged on the internal circuit, the valve being controlled by control means cooperating with the man/machine interface, wherein the respiratory assistance ventilator further comprises a flow-rate sensor and a pressure sensor for measuring the flow-rate and the pressure of the gas in the internal circuit, the sensors cooperating with the control means in such a way as to permit automatic control and regulation of the proportional valve in terms of flow-rate or pressure. Therefore it would have been obvious to modify Russel's invention by providing a respiratory assistance ventilator that comprises an internal gas circuit forming a fluidic connection from an inlet orifice to an outlet orifice, and a proportional valve being arranged on the internal circuit, the valve being controlled by control means cooperating with the man/machine interface, wherein the respiratory assistance ventilator further comprises a flow-rate sensor and a pressure sensor for measuring the flow-rate and the pressure of the gas in the internal circuit, the sensors cooperating with the control means in such a way as to permit automatic control and regulation of the proportional valve in terms of flow-rate or pressure as taught by Jonsson in order to better monitor the amount of gas being delivered to the patient.

Referring to claims 14 and 33, Russel discloses the applicant's invention as claimed with the exception of providing a respirator assistance device that comprises a venturi injector arranged on the internal circuit, downstream of the proportional valve. Jonsson discloses a lung ventilator that does provide a respirator assistance device that comprises a venturi injector arranged on the internal circuit, downstream of the proportional valve. Therefore it would have been obvious to modify Russel's invention by providing a respirator assistance device that

comprises a venturi injector arranged on the internal circuit, downstream of the proportional valve as taught by Jonsson in order to have better control the amount of gas being delivered.

Referring to claims 19 and 36, Russel discloses the applicant's invention as claimed with the exception of providing a pressure-reducing valve and ventilator that are protected by a protective hood fixed on the compressed gas source. Jonsson discloses a lung ventilator that does provide a pressure-reducing valve and ventilator that are protected by a protective hood fixed on the compressed gas source. Therefore it would have been obvious to modify Russel's invention by providing a pressure-reducing valve and ventilator that are protected by a protective hood fixed on the compressed gas source as taught by Jonsson in order to prevent the pressure-reducing valve and ventilator from being damaged.

Referring to claim 27, Russel discloses the applicant's invention as claimed with the exception of providing a respiratory assistance ventilator comprises an internal gas circuit forming a fluidic connection from an inlet orifice to an outlet orifice and a proportional valve being arranged on the internal circuit the valve being controlled by control means cooperating with the man/machine interface and a pressure-reducing valve device, the respiratory assistance ventilator, and the ventilator are protected by a protective hood fixed on the compressed gas source.

Jonsson discloses a lung ventilator that provides a respiratory assistance ventilator comprises an internal gas circuit forming a fluidic connection from an inlet orifice to an outlet orifice and a proportional valve being arranged on the internal circuit the valve being controlled by control means cooperating with the man/machine interface and a pressure-reducing valve device, the respiratory assistance ventilator, and the ventilator are protected by a protective hood

fixed on the compressed gas source. Therefore it would have been obvious to modify Russel's invention by providing a respiratory assistance ventilator comprises an internal gas circuit forming a fluidic connection from an inlet orifice to an outlet orifice and a proportional valve being arranged on the internal circuit the valve being controlled by control means cooperating with the man/machine interface and a pressure-reducing valve device, the respiratory assistance ventilator, and the ventilator are protected by a protective hood fixed on the compressed gas source as taught by Jonsson in order for the emergency ventilator to function more accurately.

Claims **23, 24, 25, 26 and 39** are rejected under 35 U.S.C. 103(a) as being unpatentable over Russel, Sr. et al. US Patent No. 5,099,837 in view of Dubois et al. US Patent No. 6,520,176.

Referring to claims 23 and 24, Russel discloses the applicant's invention as claimed with the exception of providing a portable assembly apparatus for emergency ventilation that has a total weight less than 15 kg. Dubois discloses a portable oxygen concentrator that a portable assembly apparatus for emergency ventilation that has a total weight less than 15 kg (see abstract). Therefore it would have been obvious to modify Russel's invention by providing a portable assembly apparatus for emergency ventilation that has a total weight less than 15 kg as taught by Dubois in order to make it easier to carry around.

Referring to claim 25, 26, 28, 31 and 40, Russel discloses the applicant's invention as claimed with the exception of providing a carrier arrangement selected from a group consisting of backpack; harness; and any similar carrying means. Dubois discloses a portable oxygen concentrator that does provide a carrier arrangement selected from a group consisting of backpack; harness; and any similar carrying means (see figure 5). Therefore it would have been obvious to modify Russel's invention by providing a carrier arrangement selected from a group

consisting of backpack; harness; and any similar carrying means as taught by Dubois in order to make it easier to carry around.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP
May 10th, 2005

Henry Bennett
Supervisory Patent Examiner
Group 3700

Appendix 3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.:	10/810,299
Applicants:	Christian BLEYS, et al.
Filed:	March 26, 2004
Title:	PORTABLE ASSEMBLY FOR EMERGENCY VENTILATION
TC/A.U.:	3743
Examiner:	Nihir B. Patel
Docket No.:	Serie 6155
Customer No.:	000040582

AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action of **May 17, 2005**, please amend the application as follows:

Amendments to the Claims are reflected in the listing of claims which begin on page 2 of this paper.

Remarks begin on page 9 of this paper.

Amendments to the Claims

This listing of claims will replace all prior versions and listings of claims in the application.

Listing of Claims:

Claims 1 – 10 (cancelled).

Claim 11 (currently amended): A portable assembly apparatus for emergency ventilation, comprising:

a) a source of compressed gas, wherein said compressed gas course is equipped with a gas pressure-reducing valve device to control the flowrate and the pressure of the gas issuing from said compressed gas source;

b) a respiratory assistance ventilator fed with gas by said compressed gas source; and

c) a man/machine interface cooperating with said ventilator so as to permit regulation of at least one ventilation parameter and at least one ventilation set-point,

wherein said gas pressure-reducing valve device comprises an outlet connector to which said respiratory assistance ventilator is fixed,

wherein said respiratory assistance ventilator comprises an internal gas circuit forming a fluidic connection from an inlet orifice connected to the low-pressure outlet connector of the pressure reducing valve to an outlet orifice through which the gas is delivered to a patient circuit, and a proportional valve being arranged on said internal circuit to regulate the proportion of gas delivered to the patient circuit, said valve being controlled by control means cooperating with said man/machine interface,

wherein said respiratory assistance ventilator further comprises a flowrate sensor and a pressure sensor for measuring the flowrate and the pressure of the gas in the internal circuit, said sensors cooperating with said control means in such a way as to permit automatic control and regulation of said proportional valve in terms of flowrate or pressure,

wherein said man/machine interface comprises means for regulating a ventilation set-point or parameter in order to permit selection and regulation of at least one ventilation parameter or of at least one ventilation set-point, and

wherein said pressure-reducing valve device, said respiratory assistance ventilator, and said man/machine interface cooperating with said ventilator form a compact system supported by said compressed gas source.

Claim 12 – 13 (cancelled).

Claim 14 (previously presented): The apparatus according to claim 11, wherein said respiratory assistance ventilator further comprises a venturi injector arranged on said internal circuit, downstream of said proportional valve.

Claim 15 – 16 (cancelled).

Claim 17 (previously presented): The apparatus according to claim 11, further comprising display means cooperating with said regulating means in order to make it possible to visualize and display at least one value of at least one ventilation parameter or of at least one ventilation set-point that has been selected and regulated.

Claim 18 (previously presented): The apparatus according to claim 11, wherein further comprising a patient circuit with at least one gas conduit connected, via its upstream end, to said outlet orifice of said ventilator and, via its downstream end, to a respiration mask.

Claim 19 (previously presented): The apparatus according to claim 11, wherein said pressure-reducing valve and said ventilator are protected by a protective hood fixed on said compressed gas source.

Claim 20 (previously presented): The apparatus according to claim 11, wherein said means for regulating a ventilation set-point or parameter permit selection and regulation of at least one ventilation parameter or of at least one ventilation set-point are selected from the group consisting of:

a) ventilation frequency;
b) ventilation flowrate;
c) ventilation volume;
d) composition of the gas mixture;
e) inhalation trigger threshold;
f) inhalation time;
g) exhalation time;
h) inhalation time and exhalation time;
i) ratio of inhalation time and exhalation time;

j) positive expiratory pressure (PEP);
k) ventilation mode; and
l) maximum safety pressure.

Claim 21 (cancelled).

Claim 22 (previously presented): The apparatus according to claim 11, wherein said compact system is supported by an oxygen cylinder.

Claim 23 (previously presented): The apparatus according to claim 11, wherein the total weight is less than 25 kg.

Claim 24 (previously presented): The apparatus according to claim 23, wherein the total weight is less than 15 kg.

Claim 25 (previously presented): The apparatus according to claim 11, further comprising a carrier arrangement.

Claim 26 (previously presented): The apparatus according to claim 25, wherein said carrier arrangement is selected from the group consisting of:

a) backpack;
b) harness; and
c) any similar carrying means.

Claim 27 (currently amended): A portable assembly apparatus for emergency ventilation, comprising:

a) a source of compressed gas, wherein said compressed gas course is equipped with a gas pressure-reducing valve device to control the flowrate and the pressure of the gas issuing from said compressed gas source;
b) a respiratory assistance ventilator fed with gas by said compressed gas source; and
c) a man/machine interface cooperating with said ventilator so as to permit regulation of at least one ventilation parameter and at least one ventilation set-point,

wherein said gas pressure-reducing valve device comprises an outlet connector to which said respiratory assistance ventilator is fixed;

wherein said respiratory assistance ventilator comprises an internal gas circuit forming a fluidic connection from an inlet orifice connected to the low-pressure outlet connector of the pressure reducing valve to an outlet orifice through which the gas is delivered to a patient circuit, and a proportional valve being arranged on said internal circuit to regulate of the proportion of gas delivered to the patient circuit, said valve being controlled by control means cooperating with said man/machine interface,

wherein said man/machine interface comprises means for regulating a ventilation set-point or parameter in order to permit selection and regulation of at least one ventilation parameter or of at least one ventilation set-point;

wherein said pressure-reducing valve and said ventilator are protected by a protective hood fixed on said compressed gas source;

wherein said pressure-reducing valve device, said respiratory assistance ventilator, and said man/machine interface cooperating with said ventilator form a compact system supported by said compressed gas source; and

wherein said compact system is supported by an oxygen cylinder.

Claim 28 (previously presented): The apparatus according to claim 27, wherein the total weight is less than 15 kg, and further comprises a carrier arrangement selected from the group consisting of:

a) backpack;
b) harness; and
c) any similar carrying means.

Claim 29 (previously presented): A method of providing emergency ventilation to a patient comprising treating said patient with oxygen, wherein said oxygen is provided using a portable assembly comprising:

a) a source of compressed gas, wherein said compressed gas course is equipped with a gas pressure-reducing valve device to control the flowrate and the pressure of the gas issuing from said compressed gas source;
b) a respiratory assistance ventilator fed with gas by said compressed gas source; and

c) a man/machine interface cooperating with said ventilator so as to permit regulation of at least one ventilation parameter and at least one ventilation set-point.

Claim 30 (currently amended): A portable assembly apparatus for emergency ventilation, comprising:

a) a source of compressed gas, wherein said compressed gas course is equipped with a gas pressure-reducing valve device to control the flowrate and the pressure of the gas issuing from said compressed gas source;

b) a respiratory assistance ventilator fed with gas by said compressed gas source; and

c) a man/machine interface cooperating with said ventilator so as to permit regulation of at least one ventilation parameter or at least one ventilation set-point,

wherein said respiratory assistance ventilator comprises an internal gas circuit forming a fluidic connection from an inlet orifice to an outlet orifice, and a proportional valve being arranged on said internal circuit, said valve being controlled by control means cooperating with said man/machine interface,

wherein said respiratory assistance ventilator comprises an internal gas circuit forming a fluidic connection from an inlet orifice connected to the low-pressure outlet connector of the pressure reducing valve to an outlet orifice through which the gas is delivered to a patient circuit, and a proportional valve being arranged on said internal circuit to regulate of the proportion of gas delivered to the patient circuit, said valve being controlled by control means cooperating with said man/machine interface,

wherein said man/machine interface comprises means for regulating a ventilation set-point or parameter in order to permit selection and regulation of at least one ventilation parameter or of at least one ventilation set-point, and

wherein said pressure-reducing valve device, said respiratory assistance ventilator, and said man/ machine interface cooperating with said ventilator form a compact system supported by said compressed gas source.

Claim 31 (previously presented): A method of providing emergency ventilation to a patient comprising treating said patient with oxygen, wherein said oxygen is provided using a portable assembly according to claim 30.

Claim 32 (cancelled).

Claim 33 (previously presented): The apparatus according to claim 30, wherein said respiratory assistance ventilator further comprises a venturi injector arranged on said internal circuit, downstream of said proportional valve.

Claim 34 (previously presented): The apparatus according to claim 33, further comprising display means cooperating with said regulating means in order to make it possible to visualize and display at least one value of at least one ventilation parameter or of at least one ventilation set-point that has been selected and regulated.

Claim 35 (previously presented): The apparatus according to claim 30, wherein further comprising a patient circuit with at least one gas conduit connected, via its upstream end, to said outlet orifice of said ventilator and, via its downstream end, to a respiration mask.

Claim 36 (previously presented): The apparatus according to claim 30, wherein said pressure-reducing valve and said ventilator are protected by a protective hood fixed on said compressed gas source.

Claim 37 (previously presented): The apparatus according to claim 33, wherein said means for regulating a ventilation set-point or parameter permit selection and regulation of at least one ventilation parameter or of at least one ventilation set-point are selected from the group consisting of:

a) ventilation frequency;
b) ventilation flowrate;
c) ventilation volume;
d) composition of the gas mixture;
e) inhalation trigger threshold;
f) inhalation time;
g) exhalation time;
h) inhalation time and exhalation time;
i) ratio of inhalation time and exhalation time;
j) positive expiratory pressure (PEP);
k) ventilation mode; and

l) maximum safety pressure.

Claim 38 (previously presented): The apparatus according to claim 30, wherein said compact system is supported by an oxygen cylinder.

Claim 39 (previously presented): The apparatus according to claim 30, wherein the total weight is less than 15 kg.

Claim 40 (previously presented): The apparatus according to claim 30, further comprising a carrier arrangement selected from the group consisting of:

a) backpack;

b) harness; and

c) any similar carrying means.

REMARKS / ARGUMENTS

In complete response to the Office Action dated May 17, 2005, on the above identified application, reconsideration is respectfully requested. Claims 11, 12, 14, 17-20, and 22-40 are pending in this application.

With this amendment, claims 11, 27 and 30 have been amended. Claims 12 and 32 have been cancelled.

Claim Rejections Under 35 U.S.C. § 103:

Claims 11, 12, 14, 17, 18, 19, 20, 22, 27, 29, 30, 32, 33, 34, 35, 36, 37, and 38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Russel, Sr. et al. (US 5,099,837) in view of Jonsson et al. (US 3,741, 208). The Applicants respectfully contend that, for the following reasons, this rejection deserves reconsideration.

The Applicants respectfully contend that one of ordinary skill in the art would not find the motivation to combine these references. Jonsson '208 describes a **large** and **heavy apparatus** intended only for stationary use (such as in a hospital for anaesthesia purposes), while Russel '837 deals with a **portable device** used to provide oxygen at various locations to wounded people. One of ordinary skill in the art would **not find** the **motivation to combine** the portable oxygen device of Russel '837, with the large, stationary apparatus of Jonsson '208.

Furthermore, the Applicants also respectfully contend that the combination of Russel '837 with Jonsson '208 neither teaches nor suggests the specific internal gas circuit, as claimed in amended claim 11, which operates to form a fluidic connection between an internal orifice which is connected to a low-pressure outlet connector of a pressure reducing valve and an outlet orifice through which the gas is delivered to a patient circuit so as to regulate the proportion of gas delivered to the patient circuit, where said valve is controlled by a control means cooperating with said man/machine interface.

The device disclosed by Jonsson '208 has as a principle element a **bellows** which acts as **both** a reservoir and as a pressure reducing valve (col. 3, lines 8 - 9 and lines 16 – 17). Therefore, Jonsson '208 cannot be combined with Russel '837 to teach providing an **internal** gas circuit on a respiratory ventilator with a **proportional** valve to regulate gas delivered to the patient circuit.

This is because, Jonsson '208 discloses providing gas to the device 1 via a **non-return valve**, which has the purpose of supplying a constant working pressure to the lung ventilator, whereas the instant application teaches a gas pressure reducing valve to control the flow rate and pressure of the gas. On the patient circuit, the bellows of Jonsson '208 acts as a **pressure reducing valve**, but **not as a proportional valve** as is taught by the instant application.

Furthermore, Jonsson '208 discloses both **maintaining** the volume of gas within the bellows at about half its maximum level, and exposing the bellows to a **constant** compressive force which is independent of its filling degree (col. 3, lines 8-16). Since these levels are constant, a person of ordinary skill in the art would not understand Jonsson '208 to be teaching the use of a **proportional valve** able **to regulate** the gas to be delivered to the patient circuit.

To summarize the above arguments schematically:

Jonsson (US'208):

non-return valve ⇒ is used to supply constant pressure in the internal circuit

+

pressure reducing valve ⇒ is used to supply constant pressure in the patient circuit

whereas

Instant application:

pressure reducing valve ⇒ is used to control the flowrate in addition to the pressure in the internal circuit

+

proportional valve ⇒ regulate the gas delivered to the patient (both flowrate and pressure).

Additionally, Jonsson '208 neither discloses nor suggests a flowrate sensor or a pressure sensor to monitor the gas in the **internal circuit**. The monitoring unit (5) of Jonsson '208 monitors the pressure of the gas in the **patient circuit**, and the expired volume of respiration gas. Since Jonsson '208 fails to suggest these sensors for

measuring the flowrate and pressure of the gas in the internal circuit or a proportional valve in the internal circuit, it **fails** to suggest an apparatus for permitting **automatic control** and regulation of an internal proportional valve with respect to flowrate and pressure.

As a person of ordinary skill in the art would not find the suggestion to combine Russel '837 with Jonsson '208, nor would they find that the combination of the two teaches or suggests each and every limitation of the current application, the Applicants respectfully contend that the basis for this rejection deserves reconsideration.

Claims 23, 24, 25, 26, 28, 31, 39, and 40 currently stand rejected under 35 U.S.C. 103(a) as being unpatentable over Russel, Sr. et al (US 5,099,837) in view of Dubois et al. (US 6,520,176). The applicants respectfully contend that, for the following reasons, this rejection deserves reconsideration.

The Applicants respectfully contend that the combination of Russel '837 with Dubois '176 neither teaches nor suggests an internal gas circuit which forms a fluidic connection between an internal orifice which is connected to a low-pressure outlet connector of a pressure reducing valve and an outlet orifice through which the gas is delivered to a patient circuit so as to regulate the proportion of gas delivered to the patient circuit, where said valve is controlled by a control means cooperating with said man/machine interface. Such an internal gas circuit is taught by amended claim 11 of the instant application, upon which claims 23, 24, 25, and 26 depend. This circuit is also taught by amended claim 27, upon which claim 28 depends. Likewise, this circuit is taught by amended claim 30, upon which claims 31 and 40 depend.

Claim 39 currently stands rejected, however the Examiner's comments fail to state grounds for this rejection. The Applicants are unsure as to how to proceed with regard to this rejection.

As a person of ordinary skill in the art would not that the combination of Russel '837 with Dubois '176 teaches or suggests each and every limitation of the current application, the Applicants respectfully contend that the basis for this rejection deserves reconsideration.

CONCLUSION

Accordingly, it is believed that the present application now stands in condition for allowance. Early notice to this effect is earnestly solicited. Should the Examiner believe a telephone call would expedite the prosecution of the application, he is invited to call the undersigned attorney at the number listed below.

Respectfully submitted,

Elwood Haynes, Reg. No. 55,254

Date: **August 17, 2005**

Air Liquide
2700 Post Oak Blvd., Suite 1800
Houston, Texas 77056
Phone: (713) 624-8954
Fax: (713) 624-8950

CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 17th day of August, 2005.

Diana Guzman

Appendix 4

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,299	03/26/2004	Christian Bleys	Serie 6155	9269

7590 01/25/2006

Linda K. Russell
Air Liquide
Suite 1800
2700 Post Oak Blvd.
Houston, TX 77056

EXAMINER	
PATEL, NIHIR B	

ART UNIT	PAPER NUMBER
3743	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/810,299	BLEYS ET AL.	
	Examiner	Art Unit	
	Nihir Patel	3743	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08.22.2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

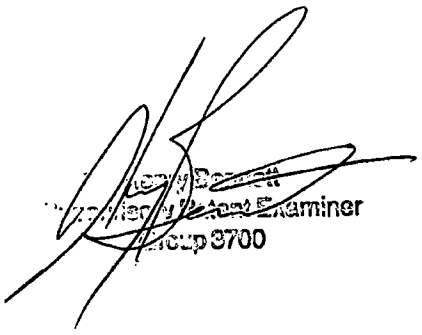
8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

    .
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

The amended claims 11, 30 and 31 contain subject matter ("...wherein the gas pressure-reducing valve device comprises an outlet connector to which the respiratory assistance ventilator is fixed...", "...through which the gas is delivered to a patient circuit...", and "...to regulate the proportion of gas delivered to the patient circuit...") that raises new issues that would require further consideration and/or search.



Appendix 5

Patent eBusiness

- Electronic Filing
- Patent Application Information (PAIR)
- Patent Ownership
- Fees
- Supplemental Resources & Support

Patent Information

Patent Guidance and General Info

- Codes, Rules & Manuals
- Employee & Office Directories
- Resources & Public Notices

Patent Searches

Patent Official Gazette

- Search Patents & Applications
- Search Biological Sequences
- Copies, Products & Services

Other

Copyrights
Trademarks
Policy & Law
Reports

Patent Application Information Retrieval

Order Certified Application As Filed | Order Certified File Wrapper

10/810,299 Portable assembly for emergency ventilation

Select New Case | Application Data | Transaction History | Image File Wrapper | Foreign Priority | Published Documents | A

This application is officially maintained in electronic form. To View: Click th
Description. To Download and Print: Check the desired document(s) and cl

Available Documents

Mail Room Date	Document Description	Page Count
02-04-2008	Abandonment	2
01-25-2006	Advisory Action (PTOL-303)	3
08-22-2005	Amendment After Final	2
08-22-2005	Claims	7
08-22-2005	Applicant Arguments/Remarks Made in an Amendment	4
08-22-2005	Fee Worksheet (PTO-06)	1
08-22-2005	Fee Worksheet (PTO-06)	1
05-17-2005	Final Rejection	7
05-17-2005	Search information including classification, databases and other search related notes	1
05-17-2005	Index of Claims	1
02-17-2005	Amendment - After Non-Final Rejection	2
02-17-2005	Claims	7
02-17-2005	Applicant Arguments/Remarks Made in an Amendment	4
02-17-2005	Abstract	1
02-17-2005	Fee Worksheet (PTO-06)	1
02-17-2005	Fee Worksheet (PTO-06)	1
11-15-2004	Non-Final Rejection	8

List of References

11-15-2004	cited by applicant and considered by examiner	1
11-15-2004	List of references cited by examiner	1
11-15-2004	Search information including classification, databases and other search related notes	1
11-15-2004	Index of Claims	1
06-21-2004	Drawings-only black and white line drawings	2
06-21-2004	Oath or Declaration filed	3
06-07-2004	Pre-Exam Formalities Notice	2
03-26-2004	Transmittal of New Application	4
03-26-2004	Specification	10
03-26-2004	Claims	3
03-26-2004	Abstract	1
03-26-2004	Drawings-only black and white line drawings	2
03-26-2004	Preliminary Amendment	1
03-26-2004	Specification	2
03-26-2004	Claims	5
03-26-2004	Applicant Arguments/Remarks Made in an Amendment	1
03-26-2004	Information Disclosure Statement (IDS) Filed	2
03-26-2004	Foreign Reference	15
03-26-2004	Foreign Reference	6
03-26-2004	NPL Documents	1
03-26-2004	Fee Worksheet (PTO-06)	1
03-26-2004	Fee Worksheet (PTO-06)	1
03-26-2004	Foreign Reference	24
03-26-2004	Foreign Reference	52
03-26-2004	Certified Copy of Foreign Priority Application	18
03-26-2004	Fee Worksheet (PTO-06)	1

If you need help:

- *Call the Patent Electronic Business Center at (866) 217-9197 (toll fr*
  EBC@uspto.gov for specific questions about Patent Application Infor
  (PAIR).
- *Send general questions about USPTO programs to the USPTO Conta*
- *If you experience technical difficulties or problems with this applicati*
  them via e-mail to Electronic Business Support or call 1 800-786-91

You can suggest USPTO webpages or material you would like featured on this section by E-mail to the webmaster@uspto.gov
to accommodate all requests, your suggestions will be considered and may lead to other improvements on the